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UNCLAS SECTION 01 OF 02 HANOI 000048

SIPDIS

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E.O. 12958: N/A

TAGS: KOCI CVIS CASC PREL VM

SUBJECT: Vietnam: Moving Ahead Towards an Adoptions Protocol

Ref: A) 03 Hanoi 1233

¶1. (U) Summary. In a meeting with Consul, Mr. Long, the Acting Director of the new Department of International Adoptions (DIA) in the Ministry of Justice identified the issue of "state vs "government" as the GVN's most significant issue regarding completion of the draft Protocol on adoptions. In addition, Long also previewed some of the specific GVN comments on the draft Protocol that will be provided to the U.S. in writing by mid January, and outlined a timeline of next steps on the GVN side. End Summary.

"State" vs. "Government"

¶2. (U) In a meeting with Consul on January 6th, the Acting Director of the new DIA, Vu Duc Long made it clear that the most significant issue with the draft Protocol is the concept of "state" versus "government". The GVN places treaties into one of four categories: the "state" level (meaning the level of the State President), the "government" level (meaning the office of the Prime Minister), the "ministerial" level, and the "agency" level. Because inter-country adoption involves the rights of children, they believe the treaty should be at the highest level - the "state" level, and thus not be a statement of understandings between "governments". According to Long, any indication that the U.S. wants this to be an understanding between "governments" rather than "states" is an indication that we give the matter less significance than it merits. This echoes concerns raised earlier (ref A), concerning the type and title of the document. Long does not believe questions over the type of document will be raised again as long as the text of the document reflects an understanding between the two countries at the "state" level.

¶3. (U) Along the same lines, Long also raised questions as to whether the Protocol will apply at all levels of the USG. For example, he asked, what if the U.S. Congress has a problem with U.S.-Vietnam adoptions - will Congress be bound by this Protocol or have the authority to question it? The GVN goal is a document that will apply to all levels and branches of the federal government.

Discussion of Specific Comments

¶4. (U) Long indicated that our latest draft Protocol had been submitted to the relevant agencies within the GVN for comment. The DIA had received comments from all but one agency, and Long committed to provide written comments on the draft to the U.S. before the Vietnamese New Year (Tet) holiday begins on January 21. In the meantime, Long previewed a list of what some of those comments will be.

- The U.S. and GVN legal and adoptions structures are very different, but the Protocol reflects the U.S. structure only. For example, the Protocol makes reference to Vietnamese domestic adoption service providers. While Vietnam does have orphanages, it does not have any adoption service providers.

- Article 2 lists the laws, precedents and legal authorities governing inter-country adoptions. The GVN wishes to add a number of Vietnamese documents to this list, such as their Marriage and Family Law, Nationality Law, etc.

- In Article 4, the term "jurisdiction" is troublesome. The term has different definitions under common law and civil law. Long suggested that the legal experts will need to discuss this point.

- Article 7 lists several authorities over inter-country adoptions. The GVN will need the Protocol to indicate which authority is the "decisive" authority in the U.S. and clarify the role played by each.

- Article 15 indicates that U.S. prospective adoptive parents (PAPs) must file applications with the GVN Central

Adoption Agency. If this means that they must file the application in person, it creates the requirement for PAPs to travel to Vietnam twice (once to file, and once to receive the child).

- Paragraph 3 of Article 17 highlights the transparency of fees exchanged between the PAPs and adoption service providers only. It does not go far enough with respect to fees paid to orphanages, civil officials, etc. The GVN feels strongly that the exchange of fees must be clearly defined and transparent with ALL parties. The GVN indicated their interest in this matter is strong enough that they might be willing to waive reciprocity on this point.

- The GVN would like to include an exemption to legalization requirements for documents related to inter-country adoptions. This is necessary because there is currently no Judicial Assistance Treaty between the USG and GVN and current legalization requirements are extensive in adoption cases.

- There is concern that the Protocol could be interpreted to apply to the humanitarian efforts of agencies involved in international adoptions. He urged that the two issues be treated separately.

Next Steps

15. (U) Long provided consul with a tentative timeline for the remaining steps on the GVN side in achieving and putting into effect a Protocol:

- January: GVN provides written comment and proposes dates for negotiations.

- February: 1st round of negotiations. Document initiated and sent to the "government" (meaning Prime Minister). (Note: If all issues not resolved, DIA will seek further comment and propose dates and location for a second round of negotiations in March. If this happens, the remaining dates will slip.)

- March: GVN prepares a Vietnamese translation and submits it for USG approval.

- Following USG approval of the translation: Signing of the document by the Ambassador and someone designated by the office of the Prime Minister.

- Following signing: The State President ratifies the Protocol. (With adoptions Agreements signed between the GVN and other countries recently, this has happened quite quickly.)

- One month following ratification: The Protocol only goes into effect after publication in the Official Gazette.

16. (U) When asked, Long indicated that negotiations would probably take place based on the draft provided in English.

Comment

17. (U) The meeting was quite productive. It was good to see the GVN sharing so many of the USG concerns. Specifically, Mission would support moving away from the term "jurisdiction" (3rd bullet, para 4) out of fear that babies trafficked into Vietnam might be considered within Vietnam's jurisdiction, and thus adoptable under this Protocol. In addition, Mission strongly echoes the GVN concerns with transparency of fees with ALL parties. If the GVN is willing to waive reciprocity and define two different sets of requirements in terms of transparency of fees, this is an offer we should seize.

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